

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BAYSHEV v. RUSSIA

(Application no. 41223/20)

JUDGMENT

STRASBOURG

27 October 2022

This judgment is final but it may be subject to editorial revision.



In the case of Bayshev v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 6 October 2022,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 August 2020.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained of the deficiencies in proceedings for review of the lawfulness of detention and about the lengthy detention on remand (see appended table).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

5. The applicant complained of the deficiencies in the proceedings for review of the lawfulness of his detention. He relied, expressly or in substance, on Article 5 § 4 of the Convention, which reads as follows:

Article 5 § 4

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

6. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III).

Where an individual's personal liberty is at stake, the Court has very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia*, twenty-six days, was found to be in breach of the "speediness" requirement of Article 5 § 4).

7. In the leading case of *Idalov v. Russia [GC],* no. 5826/03, §§ 154-58, 22 May 2012, the Court already found a violation in respect of issues similar to those in the present case.

8. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the appeal proceedings for the review of the lawfulness of the applicant's detention, as set out in the table appended below, cannot be considered compatible with the requirements set out in Article 5 § 4 of the Convention.

9. This complaint is therefore admissible and discloses a breach of Article 5 § 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

10. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Dirdizov v. Russia,* no. 41461/10, 27 November 2012.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Oravec v. Croatia,* no. 51249/11, §§ 78-80, 11 July 2017 and *Dirdizov,* cited above), the Court considers it reasonable to award the sum indicated in the appended table.

13. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a breach of Article 5 § 4 of the Convention concerning the deficiencies in the proceedings for review of the lawfulness of the detention;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 5 § 4 of the Convention (deficiencies in proceedings for review of the lawfulness of detention)

Application no. Date of introduction	Applicant's name Year of birth	First-instance court and date of detention order	Appeal instance court and date of decision	Procedural deficiencies	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
41223/20 23/08/2020	**Igor Andreyevich BAYSHEV** 1982	Arkhangelsk Regional Court, 19/06/2020	Second Appellate Court of St Petersburg, 04/08/2020	lack of speediness of review of detention (*Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012)	Art. 5 (3) – excessive length of detention on remand – since 25/11/2017 and still pending; more than 4 years and 9 months; collective detention orders; use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice, as the case progressed; failure to assess the applicant's personal situation reducing the risks of re-offending, colluding or absconding, as the case progressed; failure to examine the possibility of applying other measures of restraint, as the case progressed; failure to conduct the proceedings with due diligence during the period of detention	5,500

[1] Plus any tax that may be chargeable to the applicant.